

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:09-cr-11-01

v.

HONORABLE PAUL L. MALONEY

WESLEY DARNELL BURTLEY

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant Wesley Darnell Burtley has filed two motions for modification or reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to drug quantity. The first motion (ECF No. 41) is **DISMISSED AS MOOT**. It was not filed on the required form. The defendant has cured this deficiency and re-filed his motion on the proper form (ECF No. 43).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines modified U.S.S.G. § 2D1.1, the Drug Quantity Table with regard to drug quantity, and U.S.S.G. § 2D2.1(b). These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10(c).

However, the defendant is not eligible for a sentence modification because he was sentenced as a career offender. As a career offender, the defendant's sentencing guideline range

was calculated under U.S.S.G. § 4B1.1, not under U.S.S.G. § 2D1.1 or 2D2.1. Therefore, Amendment 782 does not retroactively lower the defendant's sentencing guideline range. Accordingly,

IT IS HEREBY ORDERED that Defendant Wesley Darnell Burtley's motion for appointment of counsel and for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (ECF No. 43) is **DENIED**.

Date: January 26, 2015

/s/ Paul L. Maloney

Paul L. Maloney
Chief United States District Judge